IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

CRL.A.No. 100 of 2001()

CC.501/1996 OF JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR.

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APPELLANT:

N.M. BABU, S/O. N.S. MATHAI,
AGED 33, RESIDING AT ARAVANCHAL,
ALAPPADAMBA AMSOM.P.O.,
ARAVANCHAL, TALIPRAMBA.

BY ADV. SRI.K.S.MADHUSOODANAN.

RESPONDENTS/ ACUSED & FORMAL PARTY:

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1. **B. SURENDRA KUMAR, FATHER'S NAME NOT KNOWN, SANTHOSH VILLA, NUT STREET, VADAGARA.P.O.**

2. **STATE OF KERALA, TO BE REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

R2. BY PUBLIC PROSECUTOR SRI. NOBLE MATHEW,
R1. BY ADV. SRI.V.N.RAMESAN NAMBISAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.100 OF 2001 (A)

Dated this the 4th day of December, 2007

JUDGMENT

This appeal is filed against the dismissal of the complaint for absence of the complainant. The impugned order is very short. I extract the same which is as follows:

> "Accused present. Complainant absent. Application rejected. The case is posted today as no further time. The reason for absence is not convincing. Hence the complaint is dismissed for default. Accused is acquitted under Section 256 of Cr.P.C."

It is the case of the complainant that, after filing the complaint he appeared several times and in all the earlier postings, he was present and it was posted for evidence on 16.9.2000. On that day he filed an application for adjournment. That was not considered and the matter was dismissed for default. We are of the opinion that the complaint cannot be dismissed in such a way if an application for adjournment was filed and reasons for adjournment should be considered on merits. Considering the

facts and circumstances of the case, I set aside the order and remand the matter afresh. Both parties may appear before the trial court on 5.2.2008. With the above direction this appeal is remanded.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal Appeal.100 OF 2001

O R D E R

4th December, 2007